

A **RE CHAN TEIK HUAT; EX P OVERSEA-CHINESE
BANKING CORPORATION LTD**

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J

B [BANKRUPTCY NO: D8-29-2369-2006]
 9 AUGUST 2007

C ***BANKRUPTCY:** Judgment - Judgment debt - Judgment debt in foreign
currency - Rate of conversion to be adopted - Rate of conversion on day
of judgment to be adopted - Whether bankruptcy notice adopting rate of
conversion on day of judgment is irregular*

***BANKRUPTCY:** Notice - Setting aside - Notice based on judgment debt
- Judgment debt in foreign currency - Rate of conversion adopted as at
date of judgment in notice - Whether notice irregular*

D The judgment creditor obtained a judgment on 11 April 2005 for
USD244,268.87 and SGD67.99 with interest and costs. The
judgment creditor converted the said judgment sum as of the date
of the judgment rather than on the date of the bankruptcy notice.

E The bankruptcy notice was issued on 21 July 2006. The judgment
debtor applied to set aside the bankruptcy notice on the ground
that the judgment creditor had failed to convert the judgment sum
which was in foreign currency into Ringgit Malaysia at the date of
the issuance of the bankruptcy notice. The judgment creditor
F contended that the bankruptcy notice was filed pursuant to the
judgment and was therefore not irregular. The Senior Assistant
Registrar dismissed the application for setting aside and hence this
appeal.

G **Held (dismissing the appeal with costs):**

H (1) The most accurate currency conversion that reflects the
judgment of the court should theoretically be the rate
prevailing at the very moment the judgment was pronounced.
But as this is impractical, the rate of conversion to be
adopted should be the rate obtaining on the day of judgment
as the judgment creditor had done in this case. There was
therefore no irregularity in the issuance of the bankruptcy
notice. (para 15)

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Case(s) referred to:

AMMB International (L) Ltd v. Penas Holdings Sdn Bhd & Anor [2005] 2 MLJ 509 (*refd*)

Havana Railways case [1960] 2 All ER 332 (*refd*)

Inter Diam Pte Ltd v. Pj Diamond Center Sdn Bhd [2002] 4 CLJ 715 HC (*refd*)

Miliangos v. George Frank (Textiles) Ltd [1975] 3 All ER 801 (*refd*)

Oversea-Chinese Banking Corp Ltd v. The firm of Yaik Joo Ann [1936] MLJ 88 (*refd*)

Re Kang Chong Yeow; ex p Mivan Far East Sdn Bhd [2001] 8 CLJ 226 HC (*refd*)

For the judgment creditor - Loo Peh Fern; M/s Skrine

For the judgment debtor - Wong Rhen Yen (Mohd Alakhir Brahim with him); M/s Dennis Nik & Wong

Reported by Amutha Suppayah

JUDGMENT**Kang Hwee Gee J:****This Is My Oral Judgment: (*ex-tempore*)**

[1] This is an appeal by the judgment debtor against the decision of the senior assistant registrar dismissing the application of the judgment debtor to set aside the bankruptcy notice on the ground that the judgment creditor has failed to convert the judgment sum which is in foreign currency into Ringgit Malaysia at the date of the issuance of the bankruptcy notice. (judgment debtor is only confining this appeal to this ground although there was another ground which was raised before the senior assistant registrar.)

[2] The judgment creditor has obtained a judgment on 11 April 2005 for USD244,268.87 and SGD67.99 with interest and costs. The judgment creditor has converted the said judgment sum as of the date of the judgment rather than on the date of the bankruptcy notice. The bankruptcy notice was issued on 21 July 2006.

[3] In this proceeding counsel for the judgment debtor Encik Wong Rhen Yen relied on the decision of *Miliangos v. George Frank (Textiles) Ltd.* [1975] 3 All ER 801 where the House of Lords held that the judgment creditor has to convert the judgment in foreign currency into the local currency at the date of the enforcement of the judgment.

A [4] The relevant passage in the judgment read as follows (per Lord Fraser at 841):

B I think that a party suing for recovery of a debt due in a foreign currency should be entitled to claim payment of, and to get judgment for, the amount of the debt expressed in the foreign currency.

C But there must be some provision for converting the foreign currency into sterling so that it can be enforced in this country. The question is what the conversion date should be. Theoretically, it should, in my opinion, be the date of actual payment of the debt. That would give exactly the cost in sterling of buying the foreign currency. But theory must yield to practical necessity to this extent that, if the judgment has to be enforced in this country, it must be converted before enforcement. Accordingly, I agree with my noble and learned friend that conversion should be at the date when the court authorises enforcement of the judgment in sterling.

E [5] In the instant case counsel submits the judgment creditor had prematurely converted the judgment sum at the date of the judgment instead of at the date of the bankruptcy notice. Further it is submitted that the judgment creditor had calculated interest awarded in that judgment in foreign currency from the date of judgment.

F [6] Hence it is submitted there were two irregularities. One, wrong conversion of judgment from USD and SGD into Ringgit Malaysia and second, the judgment creditor went back to impose interest based on USD and SGD from the date of judgment to the date of bankruptcy notice.

G [7] By reason of the irregularities mentioned counsel submits that the judgment debtor was entitled to set aside the bankruptcy notice *ex debito justitiae*.

H [8] The appeal is opposed by counsel for the judgment creditor Cik Loo Peh Fern on the following grounds:

I 1. It is pertinent to note that the bankruptcy notice is based upon a final judgment obtained by the judgment creditor against the judgment debtor after full hearing on the merits in respect of summary judgment application filed by the judgment creditor against the judgment debtor. Judgment was entered in

favour of the plaintiff before the senior assistant registrar and subsequently affirmed by the judge in chambers. The final judgment order as translated read as follows:

IN THE HIGH COURT OF MALAYA AT
KUALA LUMPUR

(COMMERCIAL DIVISION)

SUIT NO. D5-22-1926 OF 2003

BETWEEN

OVERSEA-CHINESE BANKING
CORPORATION LIMITED

PLAINTIFF

AND

CHAN TEIK HUAT

DEFENDANT

BEFORE THE SENIOR ASSISTANT REGISTRAR
PUAN NURUL HUSNA BT AWANG

THIS 11TH DAY OF APRIL 2005

JUDGMENT

The Defendant having entered appearance herein and the Court having under Order 14 of the Rules of the High Court 1980 ordered that judgment as hereinafter provided be entered for the Plaintiff against the Defendant.

IT IS THIS DAY ADJUDGED that the Defendant do pay the Plaintiff as follows:-

- (a) the sums of USD244,268.87 (US Dollars Two hundred forty-four thousand two hundred sixty-eight and Cents eighty-seven) outstanding as at 31-12-2003 and S\$67.99 (Singapore Dollars Sixty-seven and Cents ninety-nine) outstanding as at 31-07-2003;
- (b) interest on the said sum of USD244,268.87 at the rate of 4.75% per annum above the Plaintiff's prevailing Singapore Inter Bank Offer Rate (SIBOR) for United States Dollar calculated on a daily basis (on a 360-day year) with monthly rests from 1-01-2004 to date of full payment;

A (c) interest on the said sum of S\$67.99 at 4.75% per annum above the Plaintiff's prevailing Prime lending rate (currently at 5.00% per annum) calculated on a daily basis (on a 360-day year) with monthly rests from 1-08-2003 to date of full payment;

B and costs of RM350.00 (Ringgit Malaysia Three hundred and fifty).

Dated the 11th day of April 2005.

C Senior Assistant Registrar
Mahkamah Tinggi,
Kuala Lumpur.

2. There is no appeal from this judgment and neither was there a stay of execution being applied for by the judgment debtor. It follows therefore the judgment order which was subsequently approved by both parties and the court was a good and valid judgment. It is clear from this judgment that the judgment that was obtained by the judgment creditor was expressed in USD as at 31 December 2003 in respect of the principal sum of USD244,268.87 and SGD in respect of the principal sum of USD244,268.87 and SGD in respect of the second principal sum of SGD67.99 as at 31 July 2003. Interest follows the judgment calculated on a daily basis from 1 January 2004 in respect of first principal USD sum and to the date of full payment and from 1 August 2003 in respect of the sum in SGD.

3. The bankruptcy notice is filed pursuant to the judgment that we have obtained and was therefore not irregular.

4. There are at least 3 authorities in our jurisdiction that the date of conversion should be from the date of judgment:

(i) *Re Kang Chong Yeow; Ex P Mivan Far East Sdn Bhd* [2001] 3 MLJ 98 – judgment obtained in USD. Bankruptcy notice applied for after conversion at date of judgment. Held at (4):

The bankruptcy notice stated not only the original sum due in US dollars but also stated clearly the conversion rate applied, being RM3.62 = US\$1, substantially below the official rate of conversion of RM3.80 = US\$1 of which public notice may be taken. The exchange rate should be the rate on the date of judgment. If a debtor

refuses to pay, and an adverse exchange rate change occurs during the delay, the debtor should not benefit from it.

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At p. 114 as per Abdul Wahab Patail J relying on *Oversea-Chinese Banking Corp Ltd v. The firm of Yaik Foo Ann* [1936] MLJ 88, it was held that:

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... when a statement of claim is endorsed upon a specifically endorsed writ in respect of an amount due upon a foreign judgment; the claim should be expressed in Straits Settlement Currency; and it should show the amount in Straits Settlement which is the equivalent of the amount of the foreign currency due on the foreign judgment, calculated as on the date when foreign judgment was obtained.

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- (ii) *AMMB International (L) Ltd v. Penas Holdings Sdn Bhd & Anor* [2005] 2 MLJ 509 per Abdul Malik Ishak J where it was held at (1):

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The plaintiff was entitled to fashion its claim in the US Dollars and this court would convert that claim in Ringgit Malaysia at the appropriate time – ie at the date of the judgment; *Miliangos v. George Frank (Textiles) Ltd.* [1976] AC 443 followed.

E

- (iii) *Miliangos supra* per Lord Wilberforce at p. 813 h, explaining “date of enforcement of judgment” to mean date of payment and further explained at p. 813 h as regards that conversion date the judgment creditor has three choices – one, date of action; two, date of judgment; and three, date of payment/date of enforcement of judgment, favouring the last option.

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- (iv) The case of *Inter Diam Pte Ltd v. Pj Diamond Center Sdn Bhd* [2002] 4 CLJ 715 per Hishamudin Mohd Yusof J at 716 Held (4):

The alternative claim in the equivalent Malaysian currency in the statement of claim, without actually specifying the amount in Malaysian ringgit, was legally proper and the date of conversion could either be the date of judgment or the date of payment.

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5. Now refer to bankruptcy notice – we have divided the particulars of claim into three parts:

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- A a) the first principal sum in USD together with the interest
 calculated on a daily basis from 1 January 2004 as per
 term of the judgment;
- B b) the second principal sum in SGD together with interest
 calculated on a daily basis from 1 August 2003 as per term
 of the judgment; and
- C c) costs awarded pursuant from the judgment fixed at
 RM350 arriving at the total sum of RM1,133,655.55 as at
 the date of filing of bankruptcy notice.

Reply By Encik Wong Rhen Yen

- D [9] The inconsistency in charging interest based on foreign
 currency on the one hand and claiming the judgment debt *per se*
 in Ringgit Malaysia.

Reply By Cik Loo Peh Fern

- E [10] Not true. We had calculated interest on the foreign currency
 as per the term of the judgment and converted it into Ringgit
 Malaysia as from the date of judgment as we have done on the
 principal sum. There is no irregularity at all in the bankruptcy
 notice.

Findings And Decision

- F [11] Having heard the submission of counsel for both parties, it
 is clear that the judgment creditor had diligently calculated interest
 in the following manner:
- G (i) for interest accruing on the USD 244,268.87 this is calculated
 from 1 January 2004 to the date of filing of the bankruptcy
 notice.
- H (ii) for interest accruing on the SGD 67.99 this is calculated from
 1 August 2003 to the date of filing of the bankruptcy notice.
- I [12] The dates 1 January 2004 and 1 August 2003 followed the
 terms of the judgment as to when the interest on the respective
 sums was to accrue.
- I [13] Having calculated the interest accrued on both currencies
 the judgment creditor then proceeded to convert the respective
 currencies into RM as from the date of judgment.

[14] The authorities are clear. The *Miliangos* case, *supra*, provides the persuasive authority which had been followed in our jurisdiction that a monetary judgment obtained in foreign currency should be converted to the local currency from the “date of enforcement of the judgment” as per the speech of Lord Wilberforce at p. 813 h following the *Havana Railways* case, [1960] 2 All ER 332, [1961] AC 1007, “is between (i) the date of action brought, (ii) the date of judgment, (iii) the date of payment.”

[15] The most accurate currency conversion that reflects the judgment of the court should theoretically be the rate prevailing at the very moment the judgment was pronounced. But as this is impractical, the rate of conversion to be adopted should be the rate obtaining on the day of judgment as the judgment creditor had done in this case. There is therefore no irregularity in the issuance of the bankruptcy notice.

[16] The appeal is dismissed with costs.

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